

Appl. No. 10/564,824

Remarks/Arguments

The Examiner has issued a Final Office action for the above-referenced application. In response, pursuant to 37 C.F.R. § 1.181, the Applicant respectfully asserts that the finality of the Office action is premature. Namely, a Request for Continued Examination was submitted on May 15, 2008 requesting that the Examiner consider the Response to the Final Office Action filed of March 11, 2008, of the merits. The Examiner issued an Advisory Action on April 23, 2008 indicating that the amendment would be entered for purposes of appeal but stated that the amendment "does NOT place the application in condition for allowance because: the amendments do not overcome the prior art rejections. In fact, the combined prior art rejections clearly teach the newly added amendments." In the Advisory Action, no analysis or reasoning was given by the Examiner as to why the amendment submitted did not overcome the prior art rejections although applicants remarks clearly presented reasons why the amendments overcame the prior art rejections.

In issuing the current Final Office Action, the Examiner has stated that the issuance of the Final Action is justified because the claims are drawn to the same invention claimed in the earlier

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application and could have been finally rejected on the grounds of the art previously of record. However, the Examiner Response to the Amendment entered with the Request for Continued Examination is several pages in length and is directed to why the newly submitted amendment, in the Examiner's opinion, does not overcome the prior art. Clearly, it was necessary to consider the patentability of the claims based upon the newly added amendment language.

It is respectfully submitted that the amendment to the claim submitted in March of 2008, which was entered upon the filing of the Request for Continued Examination, was a bonafide attempt to advance the application to issuance by further distinguishing the claim language over the prior art. In view of the foregoing, it is believed to be premature to close applicants rights to further prosecution by issuing a Final Office Action in response to the Request for Continued Examination (RCE). It is the intent of the RCE procedure to allow prosecution to be opened to permit applicants to have the right to prosecute where there remain honest issues of differences between an applicant's interpretation of the claim language and the differences between the prior art and an Examiner's interpretation.

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For the reasons discussed in detail above, the Applicant hereby petitions the Director of the U.S. Patent & Trademark Office, who has delegated authority to Technology Center Directors, to vacate the finality of the Office action.

Since this petition is made pursuant to 37 C.F.R. § 1.181, it is believed that no fees are due at this time. However, any applicable fees may be charged to deposit account 04-1577.

Should the Director of Technology Center 3700 have any questions regarding this petition, it would be appreciated if the Director would contact the undersigned attorney of record at the telephone number provided below for purposes of facilitating prosecution of this application.

Respectfully submitted,

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By 

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